No. 150.

By. of Atty. Gen.
for U. S.
Filed Jan. 8, 1902.

Office Supreme Court U. S.
FILED
JAN 8 1902
JAMES H. MCKENNEY,
Clerk

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT,
v.
CHARLES BORCHERLING, RECEIVER, ETC. } No. 150.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

WILLIAM H. BUTTON,
Special Attorney.

LOUIS A. PRADT,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT,
v.
CHARLES BORCHERLING, RECEIVER, ETC. } No. 150.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

Through certain transactions, which appear to be immaterial in this case, the officials of the Treasury Department adjusted an account on August 31, 1892, showing that the United States was indebted to one Rodman M. Price in the sum of $76,204.08.

One Samuel Forrest had recovered a judgment against said Price in the supreme court of New Jersey for $17,000 and costs in 1857, which judgment was revived by Anna M. Forrest, administratrix of his estate, by scire facias in 1874. In her bill she asked, among other things, for an injunction and the appointment of a receiver. Price and his wife personally appeared and answered in that suit.

On August 9, 1892, Anna M. Forrest filed a petition in chancery stating that such judgment was still unpaid and that no property had been found from which it could be collected; that about $45,000 was about to be paid to Price by the officers of the Treasury Department of the United States, and asked that a receiver of the drafts that were to be issued for such payment might be appointed, and that Price be ordered to indorse said drafts to the receiver so appointed.

On August 8, 1892, a rule to show cause was issued by the chancery court of New Jersey upon said petition, made returnable September 12, 1892, and Price was enjoined from indorsing the drafts referred to. This order and injunction was served on Price August 10, 1892, but, in violation thereof, he indorsed the drafts received from the United States to other parties. Such drafts amounted to something over $45,000. Thereafter, on October 10, 1892, Charles Borcherling was appointed by the chancery court of New Jersey receiver in said cause of all the property of said Price, and especially of said drafts, with authority to possess, receive, and sue for such property. Price was also ordered to deliver and convey to the receiver all such property and things in action, and especially said drafts, and was further enjoined from disposing of them if they were still in his control.

After these payments by the United States, which were made prior to the appointment of the receiver, there still remained in the Treasury about $31,000 due to said Price, and the Secretary of the Treasury

was notified of the appointment of such receiver and that he claimed title to said moneys. On December 4, 1893, the chancery court of New Jersey further enjoined Price from receiving or seeking to obtain payment of any part of said balance remaining in the Treasury. The Secretary of the Treasury was duly notified of this order.

On December 19, 1893, upon petition of Borcherling, receiver, and Anna M. Forrest, administratrix, and upon personal service upon Price and his attorney, Fay, the supreme court of the District of Columbia enjoined Price from receiving, asking for, collecting, or indorsing, either by himself or his attorney, any warrants or drafts from the Treasury of the United States in payment of the whole or any part of said balance. But it was ordered that said injunction should be modified so as not to cover any portion of said balance which might be due to creditors of said Price resident in the District of Columbia upon proof of the proper facts. Thereafter, the said supreme court of the District of Columbia on December 22, 1893, found, upon the representation of Fay and certain other parties, which representation was concurred in by Price, that $7,900 was due said Fay and said other parties as bona fide creditors of said Price, and released that amount from the operation of the injunction. Afterwards, and against the protest of the receiver, said sum of $7,900 was paid to said Fay by a draft made payable to Rodman M. Price and indorsed by Price through his attorney, Fay. The remainder of said money was afterwards paid to the receiver.

This suit was brought in the Court of Claims to recover said sum of $7,900 so paid, and the Court of Claims rendered a judgment in favor of said receiver for said amount (Record, p. 18).

ASSIGNMENT OF ERRORS.

First. The court erred in holding that said Borcherling, as receiver, could sue outside the jurisdiction of his appointment.

Second. The court erred in holding that the payment of said sum of $7,900 to Rodman M. Price, or through him to his creditors in the District of Columbia, was not a discharge to that extent of the amount the United States owed said Price.

Third. The court erred in holding that there was due to said Borcherling, as receiver, the sum of $7,900, or any other sum.

Fourth. The court erred in not dismissing the claimant's petition.

ARGUMENT.

The argument upon which the United States relies for a reversal of the judgment appealed from is to the following effect:

The United States is a sovereignty independent of the various States and has absolute control of the manner in which it shall pay its debts, the persons to whom they shall be paid, and, in fact, whether they shall be paid or sued upon at all.

This being so, it is incompetent for the State of New Jersey, through a statute or a decree of its courts, to

direct to whom such a debt shall be paid. The United States, through comity, may or may not recognize such a New Jersey statute or decree, as it may determine, but without such recognition such statute or decree is inoperative upon the disposition of such debt.

The United States does not recognize, through comity, the passing of title to a claim against it to a receiver appointed under a State statute or decree, and consequently the United States had the right to pay the debt to the original creditor and was discharged by such payment.

Furthermore, whenever such statutes or decrees of one sovereignty are recognized by another, such recognition is with the reservation that it shall be subject to the rights of other creditors within the latter sovereignty. Inasmuch as the creditors of Price in the District of Columbia are as much within the sovereignty of the United States as is the New Jersey creditor represented by the receiver, Borcherling, it follows that the payment of this money to the creditors of Price in the District of Columbia was proper, even if the United States should extend the comity contended for.

These propositions may be stated as follows:

> First. The manner in which the United States shall pay a debt it owes, to whom it shall be paid, whether it shall be paid at all, and whether it may be sued for, are matters entirely within the control of the United States and beyond the control of the laws and courts of New Jersey or of any of the other States.

Second. A statute of New Jersey or the decree of a New Jersey court acting under such a statute can have no effect beyond the sovereignty of New Jersey except at the pleasure of the sovereignty wherein such effect is sought.

Third. The United States does not recognize through comity a statute of a State or a decree of a State court transferring to a receiver title to or the right to possession of a debt owed by a person beyond the jurisdiction of such State, and so far as the United States is concerned such a receiver can sue only in the jurisdiction appointing him.

Fourth. Should the United States extend such comity it would still be subject to the rights of creditors within the sovereignty of the United States, and a payment to such creditors in the District of Columbia or elsewhere within the United States would be a valid discharge of the debt.

We will proceed to a discussion of these propositions.

First. The manner in which the United States shall pay a debt it owes, to whom it shall be paid, whether it shall be paid at all, and whether it may be sued for, are matters entirely within the control of the United States, and beyond the control of the laws and courts of New Jersey or of any of the other States.

Although the sovereignty of the United States is not foreign to that of the States in the strictest sense, yet it is a sovereignty that is entirely independent of the States in regard to those matters which are submitted to its control.

Among the matters so reposed in the Federal Government are those which relate to the manner in which the United States shall pay its debts, whether it shall pay them at all, or be sued upon them, and to whom it shall pay them.

United States v. *Clarke*, 8 Pet., 436.
Nicholl v. *United States*, 7 Wall., 122.
Carr v. *United States*, 98 U. S., 433.

In the last case, the court said:

> We consider it to be a fundamental principle that the Government can not be sued except by its own consent; certainly no State can pass a law which would have any validity for making the Government suable in its courts.

Whether the United States shall allow the ownership of any debt against it to pass to another than the original creditor, either by voluntary assignment or by operation of law, is likewise within its control. This is manifest from the decisions of this court in the following cases:

United States v. *Gillis*, 95 U. S., 407;
Erwin v. *United States*, 97 U. S., 392;
Goodman v. *Niblack*, 102 U. S., 556;
St. Paul and Duluth R. R. v. *United States*, 112 U. S., 733;
Ball v. *Halsell*, 161 U. S., 72;
Price v. *Forrest*, 173 U. S., 410.

All of the above cases involved the construction of section 3477, United States Revised Statutes, which provides that all assignments of claims against the United States prior to a certain stage of their adjudication shall be void.

All these cases recognized the proposition that it is perfectly competent for the United States to decide what kind of an assignment shall be valid and what kind shall be invalid, and the only contention involved in any of them was as to what assignments the United States intended to prohibit. This is tantamount to saying that the United States has the right to regulate the matter as it pleases, and that the only question open for discussion is what the United States has intended by the regulations it has adopted. The effect of the decisions is that the United States has not intended to prohibit certain assignments by operation of law: but they all carry the conviction that if such intention were to be found in the statute in question it would be conclusive.

These cases involving section 3477, United States Revised Statutes, are not cited because that section is thought to have any bearing on the questions involved in this record, but to show that this court has recognized the proposition that it is within the province of the United States to say what disposition shall be made of the debts it may owe. These cases all agree that a voluntary assignment of a debt owed by the United States, if made before the proper time, is void by virtue of this statute. What would this court say to a statute passed by the State of New Jersey or any other State to the effect that such an assignment should not be void but should pass the ownership to the assignee? The only possible answer is that such an attempt on the part of a State legislature to enter upon the ground committed to the keeping of the Federal

Government is unavailing. An attempt of a State to regulate the matter would be as ineffectual as an attempt to regulate interstate commerce, another matter committed to the keeping of the Federal Government.

If, then, the United States may say what kind of a voluntary assignment of claims against it may be valid, and what kind of assignments of such claims by operation of law may be valid, it follows that if the United States has determined that the appointment of a receiver by a State court acting under State laws shall not pass the ownership of a debt due from the United States, so that the United States may not pay its original creditor and thereby discharge the debt, neither the State of New Jersey nor any other State can effectively say that such ownership shall pass. It is for the United States to say whether or not it will take that position, and no State can gainsay its right to decide upon the question.

The reason why the State of New Jersey has no power to enact laws affecting this debt is not because the United States is not territorially present within the bounds of the State of New Jersey, but it is because the United States has to do with matters of such a character that they are beyond the reach of the laws of the State of New Jersey. The exemption from legislation by the State of New Jersey is founded upon the quality of the matters exempted rather than upon their location, and those matters are as completely without the control of the State of New Jersey as if they had their actual situs in the State of California or

some foreign country. This principle is recognized throughout our jurisprudence, witness matters relating to interstate commerce which, though they may have locality within certain States, yet are as effectively beyond the reach of the legislation of those States as if they had their locality elsewhere. The Federal courts, including the Court of Claims, although they may be deemed to be sitting in the State of New Jersey, yet are courts of another sovereignty. (*Pennoyer* v. *Neff*, 95 U. S., 714.)

Second. A statute of New Jersey or a decree of a New Jersey court acting under such a statute can have no effect beyond the sovereignty of New Jersey, except at the pleasure of the sovereignty wherein such effect is sought.

That the laws of one sovereignty have absolutely no force by their own operation within another sovereignty is a proposition that is abundantly supported by authority in this and in every other country.

In *Bank of Augusta* v. *Earle* (13 Pet., 519), Chief Justice Taney, in speaking of the power of a corporation to act outside the State of its creation, said:

> It is very true that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. It exists only in contemplation of law and by force of the law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence.

The court went on to expound the doctrine of comity to the effect that other States might recognize such laws if they desired.

This principle is well exemplified in the case of insolvency laws. The insolvency laws of one State have no force as such in another.

Ogden v. *Saunders*, 12 Wheat., 213, pp. 358, 369.
Harrison v. *Sterry*, 5 Cranch., 298.
Boyle v. *Zacharie*, 6 Pet., 648.
Boyle v. *Zacharie*, 6 Pet., 635.
Baker v. *Wheaton*, 5 Mass., 509.

In *Suydam* v. *Broadnax* (14 Pet., 67) this court held that an insolvency statute of Alabama could not discharge a note given by the insolvent to citizens of New York. Mr. Justice Wayne said:

> A sovereign State and one of the States of the Union, if the latter were not restrained by constitutional prohibitions, might, in virtue of sovereignty, act upon the contract of its citizens, wherever made, and discharge them by denying a right of action upon them in its courts. But the validity of such contracts as were made out of the sovereignty or State would exist and continue everywhere else, according to the lex loci contractus.

In *Oakey* v. *Bennett* (11 How., 33) this court held that a decree in bankruptcy passed in 1843 in the United States district court for the eastern district of Louisiana did not pass to the assignee title to real estate in Texas, then a foreign State. Mr. Justice McLean said:

> A statutable conveyance of property can not strictly operate beyond the local jurisdiction.

> Any effect which may be given to it beyond this does not depend upon international law, but the principle of comity; and national comity does not require any government to give effect to such assignment when it shall impair the remedies or lessen the securities of its own citizens. And this is the prevailing doctrine in this country. A proceeding in rem against the property of a foreign bankrupt, under our local laws, may be maintained by creditors, notwithstanding the foreign assignment.

Baldwin v. *Hale* (1 Wall., 223) involved an insolvency statute of New York, and concerning it Mr. Justice Clifford said:

> Undoubtedly a State may pass a bankrupt or insolvent law under the conditions before mentioned, and such a law is operative and binding upon the citizens of the State, but we repeat what the court said in *Cook* v. *Moffat* (5 How., 308), that such laws "can have no effect on contracts made before their enactment or beyond their territory."

In *Cole* v. *Cunningham* (133 U. S., 107) it appeared that a Massachusetts court had enjoined a citizen of Massachusetts from prosecuting a claim in the courts of New York, through an assignee, on the ground that the person whose property was thus sought to be held had made an assignment in Massachusetts under the insolvency laws of that State. This court held that although the laws of Massachusetts had no effect outside of that State, yet it was proper for a court in the exercise of equity jurisdiction to enjoin a citizen within

ts jurisdiction from prosecuting suits in a foreign jurisdiction, acting, however, through jurisdiction over such person. Commenting upon the Massachusetts case of *Dehon* v. *Foster* (4 Allen, 545) Mr. Chief Justice Fuller cited with evident approval the position of the Massachusetts court in the following language:

> To the argument that the bill could not be maintained because the statutes of Massachusetts regulating the assignment and distribution of insolvent estates could have no extraterritorial effect or operation, the court answered that while it was true that the statutes of Massachusetts ex proprio vigore had no effect or operation in other States, it was also true that, by the comity of States and nations, the laws of one country are allowed to a certain extent to control the rights of persons and property in other countries, though not allowed to have any effect to the injury of the citizens of such other country.

He also said:

> If a State provides that no title shall pass to property within its borders except on certain conditions, such provision can not be overridden by the law of any other State which parties domiciled there may be held to have adopted.

In *Reynolds* v. *Adden* (136 U. S., 348), in speaking of the effect to be given in Louisiana to the insolvency laws of Massachusetts, Mr. Justice Bradley said:

> Every State exercises to a greater or less extent, as it seems expedient, the comity of giving effect to the insolvency proceedings of other

> States, except as it may be compelled to give them full effect by the Constitution of the United States.

In *Hilton* v. *Guyot* (159 U. S., 113) this court considered the effect to be given in this country to a judgment rendered under the laws of France. Mr. Justice Gray said:

> No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation, as put in force within its territory, whether by executive order, by legislative act, or by judicial decree, shall be allowed to operate within the dominion of another nation depends upon what our greatest jurists have been content to call "the comity of the nations." Although the phrase has been often criticised, no satisfactory substitute has been suggested.
>
> "Comity," in the legal sense, is neither a matter of absolute obligation on the one hand nor of mere courtesy and good will upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard to the rights of its own citizens or of other persons who are under the protection of its laws.

In *Security Trust Company* v. *Dodd* (173 U. S., 624), it appeared that a Minnesota corporation, under statutes of that State, had made an assignment of all of its property. A citizen of New York afterwards attached certain assets of the insolvent corporation in

Massachusetts, and obtained the proceeds in such proceeding. The suit was brought in Minnesota to compel him to turn over such proceeds to the assignee. This court came to the conclusion that the Minnesota statutes were practically insolvency laws, and after stating that a *voluntary assignment* usually was effective to pass title to property in other States, Mr. Justice Brown, citing a great many cases, said:

> But the rule with respect to statutory assignments is somewhat different. While the authorities are not altogether harmonious, the prevailing American doctrine is, that conveyance under a State insolvent law operates only upon property within the territory of that State, and that, with respect to property in other States, it is given only such effect as the laws of such State permit; and that, in general, it must give way to claims of creditors pursuing their remedies there. It passes no title to real estate situated in another State. Nor, as to personal property, will the title acquired by it prevail against the rights of attaching creditors under the laws of the State where the property is actually situated.

And he further said:

> We are therefore of opinion that the statute of Minnesota was in substance and effect an insolvent law; was operative as to property in Massachusetts only so far as the courts of that State chose to respect it, and that so far as the plaintiff, as assignee of the D. D. Merrill Company, took title to such property, he took it subservient to the defendants' attachment.

The case of *Wood* v. *Parsons* (27 Mich., 159) involved the effect of a Canadian insolvency assignment on property in Michigan. The court said:

> The judgment or decree of that court could not affect his property in this State nor his right here to dispose of it. These conclusions seem to result from the universally admitted principle that the laws enacted by one sovereignty can have no force or effect, as laws, within the territories of another sovereignty, and that the courts of one sovereignty can not subject persons or property in another to the direct effect of its judgments, orders, or decrees.

The same principle that thus applies to insolvency and bankruptcy laws applies to statutes and decrees that attempt to transfer to a receiver property outside the jurisdiction. Such laws and decrees have no extrajurisdictional effect. In *Security Trust Company* v. *Dodd* (*supra*), this court approved the case of *Catlin* v. *Wilcox Silver Plate Company* (123 Ind., 477), in which the Indiana court said:

> Property in a foreign State that has passed from an assignor to an assignee by a voluntary deed, and not by proceedings *in invitum* by process of law, is distinguished from like property in the hands of a receiver by operation of law or by an assignment made under legal compulsion. Assignments of the latter class are held inoperative upon property not situated within the territory over which the laws that make or compel the debtor to make them have dominion.

In the same case this court also approved the case

of *Willetts* v. *Waite* (25 N. Y., 577), in which the New York court said, at page 584:

> By a sort of fiction, that which is known as personal property adheres to the person and has no fixed situs, and hence the maxim, *mobilia personam sequuntur;* and the law which governs the person of the owner will control as to the disposition or transmission of it. (Story Confl. Laws, sec. 378, 380, 381.) But not so as to devolution of title by act and operation of law, whether by forfeiture, bankruptcy, insolvency, or otherwise. In such case the transfer, depending upon positive law, is only operative where such law prevails and is obligatory; and as the laws of a State or government have no extraterritorial force, it follows that title to property in one State does not pass by virtue of a law of a foreign State, although it be the State and domicile of the owner. The law operates, if at all, *in rem*, and the State by whose legislation it is enacted, having no jurisdiction over property without its territorial limits, *it is entirely operative in respect to it.*

In the case of *Filkins* v. *Nunnemacher* (81 Wis., 91), the rights of a receiver appointed by a court of chancery are considered. The suit was brought to collect a debt owed by a person in Wisconsin. The court held that the appointment of a receiver in Illinois did not convey the title to such debt, and said:

> The conclusion is founded on reason and sound policy. The reason plainly is that a court can not endow its officials with powers

> beyond its own jurisdiction. The stream can not rise higher than the fountain head. Therefore, by the appointment in Illinois the plaintiff acquired absolutely no right or interest in Frederiksen's property in Wisconsin.

In the case of *State Bank at New Brunswick* v. *The First National Bank of Plainfield* (34 N. J. Eq., 450) the question of whether the appointment of a receiver by a New Jersey court of chancery passed title by operation of law to a debt owed by a person in a foreign jurisdiction was discussed. The court said:

> It is obvious that a transfer of title by operation of law can only be effected within the limits of the territory where the law prevails; and as the laws of a State have no extraterritorial force, it follows that the title to property located in one State can not be passed by force of the law of another.

In Smith on Receivers, a recent work on this subject, the American doctrine in regard to this question is summarized with this result, as stated on page 109:

> As to the disposition of personal property by operation of law, as in receiverships, the law being local has no extraterritorial effect, so far as the title is concerned. In such cases the assignee takes the property subject to every equity of foreign creditors, and subject to all remedies of foreign countries.

In all these cases the principle that personal property has its situs at the domicile of the owner was disregarded, and the fact that the debtor alone was out of the jurisdiction was held sufficient to make the

assignment of no force as far as the debt was concerned.

These authorities justify the conclusion that the decree of the New Jersey court appointing the receiver in this case had no operation except within the limits of the jurisdiction of that court.

In this case the United States is the debtor, and, as such debtor, inhabits a jurisdiction entirely independent of the State of New Jersey and its courts. No law that the State of New Jersey can pass will in any way affect the United States in this regard, nor will any decrees of a New Jersey court.

It follows from the above considerations that the title to the debt owed by the United States to Price could not pass to the plaintiff by virtue of the laws of New Jersey nor the decree of the New Jersey court.

This is the principle that has been disregarded in the opinion of the court below. That opinion seems to hold that the courts of New Jersey in enforcement of New Jersey laws can effect the assignment of a debt over which the laws of New Jersey have no jurisdiction.

It does not follow from the above considerations that one sovereignty may not recognize the laws of another if it wishes to do so; and as a matter of fact one sovereignty frequently does recognize the laws of another, but whether or not such recognition will be extended is entirely within the control of the sovereignty in question.

If such recognition is extended, then the laws of the foreign State do not operate by their own force, but

by force of the local law, which says that under the circumstances the foreign law shall be applied. The foreign law becomes part of the local law *pro hac vice.*

In the case of *Dalrymple* v. *Dalrymple* (2 Hagg. C., 45) the ecclesiastical court of England adjudicated upon the validity of a marriage contracted in Scotland, and used the following language concerning the case:

> Being entertained in an English court, it must be adjudicated according to English law applicable to such a case. But the only principle applicable to such a case by the law of England is that the validity of Miss Gordon's marriage rights must be tried by reference to the law of the country where, if they exist at all, they had their origin. Having furnished this principle, the law of England withdraws altogether, and leaves the legal question to the exclusive judgment of the law of Scotland.

In 1752 the same court used the following language in a similar case, *Scrimshire* v. *Scrimshire* (2 Hagg. C., 407):

> On this point I apprehend that it is the law of this country to take notice of the laws of France, or any foreign country, in determining upon marriages of this kind. The question being in substance this, whether by the law of this country marriage contracts are not to be deemed good or bad according to the laws of the country in which they are formed, and whether they are not to be construed by that law? If such be the law of this country, the rights of English subjects can not be said to be determined by the laws of France, but by those

> of their own country which sanction and adopt this rule of decision.

In *Caldwell* v. *Van Vlissengen* (9 Hare, 415) the court said:

> I take the rule to be universal that foreigners are in all cases subject to the laws of the country in which they may happen to be; and if in any case, when they are out of their own country, their rights are regulated and governed by their own laws, I take it not to be by force of those laws themselves, but by the law of the country in which they may be, adopting those laws as part of their own law for the purpose of determining such rights.

This comity will be extended or withheld as the self-interest, public policy, or generosity of the particular State may dictate. It is not a matter of obligation, but a matter of accommodation

In *Willitts* v. *Waite et al.* (25 New York, 577) the court said:

> A quasi effect may be given to the law as a matter of comity and interstate or national courtesy when the rights of creditors or bona fide purchasers or the interests of the State do not interfere, by allowing the foreign statutory or legal transferee to sue for it in the courts of the State in which the property is.

In *Bank of Augusta* v. *Earle* (13 Pet., 519, at p. 589) this court said:

> The comity thus extended to other nations is no impeachment of sovereignty. It is the voluntary act of the nation by which it is offered;

and is inadmissible when contrary to its policy or prejudicial to its interests.

Further, the court defined it as the comity of the States, and not the comity of the courts (p. 589).

Third. The United States does not recognize through comity a statute of a State or a decree of a State court transferring to a receiver title to or the right to possession of a debt owed by a person beyond the jurisdiction of such State, and, so far as the United States is concerned, such receiver can sue only in the jurisdiction appointing him.

Acting upon the above principles, the various States have or have not recognized receiverships of other States as their pleasure or profit may have dictated. The United States, however, early decided that a receiver, statutory or otherwise, appointed in one political jurisdiction had no claim to recognition in any other, and this seems to be the law of this court.

In the case of *Booth* v. *Clark* (17 How., 322), decided in 1854, it appeared that one Camara had recovered a judgment in the supreme court of New York against Ferdinand Clark, and had taken out an execution which was returned *nulla bona*. Afterwards Camara filed a creditor's bill in the chancery court of New York, setting out his judgment and the return *nulla bona*, and praying that he might be aided to reach the equitable assets of Clark; asking for a discovery of such; an injunction against the disposal of them, and a receiver therefor. Upon this bill Booth was appointed receiver and Clark was enjoined from disposing of any of his property. It was not disputed but that the proceedings on this creditor's bill were regular. Some time later

*Booth, receiver, reported to the court that he had dis*covered no assets belonging to Clark except a claim upon Mexico, and asked leave to proceed to collect that claim, which leave was granted. Thereupon, in 1851, Booth filed his bill in the circuit court of the District of Columbia, reciting the proceedings in the New York courts; that Clark's property consisted entirely of the claim upon Mexico, and that such funds, then in the hands of the Secretary of the Treasury, belonged to him as receiver for the purposes of his appointment. Clark answered denying that the New York proceedings created any lien on this fund, and setting up the fact that after the appointment of Booth as receiver he, Clark, had been declared bankrupt in New Hampshire; that the claim against Mexico and the funds arising therefrom had passed to his assignee in bankruptcy, and they were not subject to the receiver's claim. The circuit court dismissed Booth's bill. An appeal was taken to this court. The question was whether the appointment of a receiver in New York worked a transfer of title to the fund in the hands of the Secretary of the Treasury at Washington so that it did not pass to the assignee in bankruptcy subsequently appointed under United States statutes. The court stated the question as follows:

> There is no dispute concerning the regularity or the binding operation of the judgment obtained by Camara against Clark, none in respect to the proceedings under the creditor's bill. The leading point in the case is the effect of the proceedings under the last to give the right

> to the receiver, by virtue of the lien which he claims upon the property of the debtor, to sue for and recover any part of it, legal or equitable, without the jurisdiction of the State of New York.

The court said that the receiver had urged upon the argument that by virtue of the decree of the New York court he was entitled officially to all the property of Clark, real, personal, or equitable, both within and without the State of New York; that the fund in the Treasury was a chose in action belonging to Clark when Booth was appointed receiver, and although not within the State of New York, still it followed the person of the owner and passed to the receiver because the owner was domiciled in New York, and further that the comity of nations would aid him as receiver in the assertion of his title in a foreign tribunal. In fact the argument was exactly the argument here presented in this case. The court, however, held that the New York cases cited did not maintain such propositions, nor did the cases in other jurisdictions, and held that the receivership proceedings in New York were absolutely without effect to pass the title to, or right to possession of, the fund in the hands of the Secretary of the Treasury. In coming to this conclusion the court said:

> We think that a receiver has never been recognized by a foreign tribunal as an actor in a suit. He is not within that comity which nations have permitted, after the manner of such nations as practice it, in respect to the judgments and decrees of foreign tribunals; for

all of them do not permit it, in the same manner and to the same extent, to make such comity international or a part of the laws of nations But it was said that receivers in New York are statutory officers, as assignees in bankruptcy are. That being so, he had, as assignees in bankruptcy have upon the property of the bankrupt, a lien upon the property of a judgment debtor, under an appointment in a creditor's bill. But that can not be so.

And further:

A receiver is appointed under a creditor's bill for one or more creditors, as the case may be, for their benefit, to the exclusion of all other creditors of the debtor, if there be any such, as there are in this case. Whether appointed as this receiver was, under the statute of New York, or under the rules and practice of chancery as they may be, his official relations to the court are the same. A statute appointment neither enlarges nor diminishes the limitations upon his action. His responsibilities are unaltered. Under either kind of appointment he has at most only a passive capacity in the most important part of what it may be necessary for him to do, until it has been called by the direction of the court into ability to act. He has no extraterritorial power of official action; none which the court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor's property; none which can give him, upon the principle of comity, a privilege to sue in a foreign court or another jurisdiction, as the judgment creditor himself might have done, where

his debtor may be amenable to the tribunal which the creditor may seek.

The receivership in *Booth* v. *Clark* and the one in this case are parallel. There the receiver was appointed under a State statute by the court of chancery upon a bill asking for discovery and injunction. Here the receiver was appointed under the same kind of a statute and upon the same kind of a bill. There the injunction was granted; here, also, it was granted. There the receiver was an officer of the court with the right to the possession of the debtor's property; here, also, this receiver was a court officer with the same right. There the funds were in the hands of the United States; here, also, they are. There the United States was as much subject to the laws of New York as here to the laws of New Jersey. There the receiver had as much right to sue in the circuit court for the District of Columbia as here the receiver has to sue in the Court of Claims. Probably the only reason that suit was not brought against the United States was that the Court of Claims had not then been established. Acting upon this case, the Secretary of the Treasury was perfectly justified in paying the money to Price.

It will undoubtedly be contended that *Booth* v. *Clark* is a decision unfitted to the present condition of business in this country. It is true that some of the States have recognized receivers of other States to a greater or less extent. It is also true that in *Booth* v. *Clark* the recognition of the New York receivership was opposed by other creditors of Clark, and the case might

perhaps have been decided on the ground that for that reason it was not one in which comity should be extended. Such a holding might be in accord with the rulings of some of the State courts at the present day. But this was not the ground of the decision. The case was decided on the ground of lack of capacity of the receiver to do anything outside the State of New York in any event and the inability of New York laws to reach the assets. It is also to be remarked that the creditors who opposed the recognition of that receivership were not residents of the District of Columbia, but of other States. Those States which have recognized foreign receiverships have made such recognition subject to the rights of resident creditors and not of creditors resident in still a third State. Consequently, in reality the situation in *Booth* v. *Clark* was not such as to excuse recognition of the receivership because of creditors who should be protected.

The case of *Booth* v. *Clark* has not been reversed and has been followed continuously by the various Federal courts.

Olney v. *Tanner*, 10 Fed., 101;
Holmes v. *Sherwood*, 16 Fed., 725;
Mississippi Mills v. *Ranlett*, 19 Fed., 191;
Hazard v. *Durant*, 19 Fed., 471;
Young v. *Aronson*, 27 Fed., 241;
Atkins v. *Wabash Company*, 29 Fed., 161;
Philadelphia Coal Co. v. *Daube*, 71 Fed., 583;
Hale v. *Hardon*, 89 Fed., 283;
Baltimore Loan Asso. v. *Alderson*, 90 Fed., 142;
Coltrain v. *Templeton*, 106 Fed., 370;
Zacher v. *Fidelity Co.*, 106 Fed., 593.

It is true that some of the Federal courts have recognized the right of the receiver of a foreign corporation, appointed under various statutes, to sue outside the jurisdiction of his appointment upon the authority of *Relfe* v. *Rundle* (103 U. S., 222). In that case it appeared that a Missouri corporation had become insolvent, and under the Missouri statute the superintendent of the insurance department of that State became the successor to the corporation and vested with title to all its assets, with power to close up the affairs of the corporation. The corporation had been doing business in Louisiana, and when the superintendent undertook to engage in litigation there it was objected that he could not act outside the State of Missouri; but this court held that inasmuch as the State of Louisiana through comity had allowed a Missouri corporation to do business within its borders, it must extend that comity far enough to take the corporation as it existed; that a part of the existence of the corporation was its liability to pass into the hands of the superintendent of insurance, who, for all practical purposes, became the corporation itself. In other words, that under the circumstances the State of Louisiana had extended to the State of Missouri recognition of that kind of a successor in title. Concerning the superintendent, the court said:

> He was in fact the corporation itself for all the purposes of winding up its affairs.

And further:

> No State need allow the corporations of other States to do business within its jurisdiction

> unless it chooses, with perhaps the exception of commercial corporations, but if it does without limitation, express or implied, the corporation comes in as it has been created.

The superintendent of insurance was not a statutory receiver, but successor to the corporation itself, and held to have been recognized by the State of Louisiana as such when that State allowed the corporation to do business within its borders. Such reasoning could not apply to anything but a corporation; certainly not to a receiver of the property of an individual. Nevertheless, upon the authority of this case there has been some conflict between the decisions of the Federal courts in the various circuits as to the extraterritorial powers of certain classes of statutory receivers.

In *Hale* v. *Hardon* (89 Fed., 283) it was held that a receiver appointed under a Minnesota statute to enforce the statutory liability of stockholders for the benefit of creditors could not sue outside the jurisdiction appointing him.

Judge Putnam divided receivers into three classes: First, the true successors of corporations, who could sue out of the jurisdiction, under the authority of *Relfe* v. *Randle;* second, receivers who were successors in title by voluntary assignment or by statutes of insolvency, etc., concerning whom he thought the law was unsettled; and, third, ordinary receivers, who, under *Booth* v. *Clark*, could not sue out of the jurisdiction. He held that the receiver in question was of the third class and dismissed the bill.

This case was reversed in the circuit court of appeals in the first circuit (95 Fed., 747) on the authority of *Relfe* v. *Rundle*. Judge Colt delivered a dissenting opinion upholding the opinion of Judge Putnam below.

In the second circuit the same receiver brought another action, and it was said by the circuit court of appeals that he had no standing under *Booth* v. *Clark*.

Hale v. *Allinson* (106 Fed., 258).

In *Hale* v. *Hilliker* (109 Fed., 273) the same receiver brought another action, and it was held by the circuit court of the northern district of New York that the case was properly brought under the authority of *Hale* v. *Harden* (95 Fed., 747).

In *Wigton* v. *Bosler* (102 Fed., 70) the circuit court for the eastern district of Pennsylvania said that it felt as much at liberty to hold to the opinion of Judge Putnam of the circuit court and the dissenting opinion of Judge Colt of the circuit court of appeals of the first circuit as to the prevailing opinion of the two district judges in the latter court.

In *Kirtley* v. *Holmes* (107 Fed., 8) the circuit court of appeals for the sixth circuit allowed a receiver under an Ohio statute to enforce the statutory liability of stockholders in Kentucky under the authority of *Hale* v. *Hardon* (95 Fed., 747).

It will thus be seen that there is considerable conflict between the Federal courts in the various circuits as to the intention of this court in *Relfe* v. *Rundle*. It is therefore desirable to consider what kind of a receiver the defendant in error is.

The statutes and practice in New Jersey authorize the appointment of various kinds of receivers. This receiver, Borcherling, was appointed by the court of chancery upon a creditors' bill. The statutes of New Jersey provide that when an execution on a judgment for more than $100 has been returned unsatisfied the court of chancery may entertain a bill against the debtor for the discovery of any property or things in action belonging to him; may restrain the debtor from transferring any of his property; may cause the debtor to be examined in the premises; may enjoin third persons from paying money to the debtor which may be due him; and then proceeds:

> That the said examination of said debtor and witnesses shall be certified by said master to the said court of chancery, and thereupon it shall be lawful for the said chancellor to appoint a receiver *pendente lite* of the property and things in action belonging or due to or held in trust for said debtor as aforesaid, and thereby shall receive authority to possess, receive, and in his own name as such receiver sue for such property or things in action; and the said chancellor may order such judgment debtor to convey and deliver to such receiver all such property and rights in action and the evidence thereof; and said receiver shall in all respects be subject to the authority of the said chancellor, in accordance with the practice of the said court, and shall and may dispose of the said property and things in action in conformity with the final decree in said cause. (Revision N. J., pp. 120, 121.)

There is another class of receivers in New Jersey, appointed by the judges of certain common-law courts, in proceedings supplementary to execution. (Rev. N. J., pp. 393, 394.)

The courts of New Jersey have had occasion to contrast the power of the receivers appointed by the chancellor and the receivers appointed by the common-law judges under the above statutes. In *Miller* v. *Mackenzie* (2 Stewart, 291), the court of errors and appeals held that the receiver in supplementary proceedings appointed by the common-law judge did take title to debts due the execution debtor and could sue in another court for them, but the court pointed out the distinctions between such a receiver and a receiver appointed by the chancellor in the following language:

> After a critical examination of these statutory provisions, I am unable to concur in the view which denies to these officers the ability in question. There is undoubtedly a certain analogy between this class of receivers and that other class of persons who are appointed the custodians of property *pendente lite* by a court of equity, but such analogy can not be traced beyond the general characteristics and the purposes of the two officers. Receivers of both classes are called into existence for the purpose of holding property and turning it to account for the benefit of such persons as it may be ultimately decided are entitled to it. In these respects the two kinds of officials stand on the same footing; beyond this point anything like an exact resemblance ceases, and

> thenceforth they can not be regulated by precisely the same principles. One class is created by the court under its general authority, and the functions of the office are to be ascertained by a reference to ancient practice and usage. The other class is the creature of the statute, the measure of whose power is to be discovered in the legislative words and purpose, and it is obvious, therefore, that to regard the criterion by which the extent of the authority of these two official classes is to be graduated would, many times, lead to error.

In *Harrison* v. *Maxwell* (44 N. J. L., 316) Chief Justice Depue said concerning these two classes of receivers:

> We think it clear that whatever interest, direct or indirect, Cornelius Hanna, sr., had in the suit on the replevin bond passed to Crane as receiver, in virtue of his appointment. There is a distinction between a receiver appointed *pendente lite* in equity and a receiver appointed in supplementary proceedings. This distinction is pointed out by the chief justice in *Miller* v. *Mackenzie* (2 Stewart, 291).

There is still another class of receivers in New Jersey who are appointed in chancery to wind up insolvent corporations. The power of the court of chancery in this regard is defined in much the same language that is used in regard to receivers under creditors' bills. The statute states that a chancellor may appoint a receiver, who shall have power to demand and sue for and collect property of every

description, and to sell, convey, or assign said property, all under the order of the court. (Rev. N. J., p. 189.)

In *State Bank* v. *Bank of Plainfield* (34 N. J. Eq., 450), in speaking of this statute the court says:

> So, too, if the action in which a receiver is appointed is dismissed and the receiver discharged, no act of transfer is required to give or restore title to the corporation. By the dismissal of the action the court renounces its power over the property, and the corporation resumes possession, not in virtue of a new or restored title, but in virtue of a previous unchanged title.

From these cases it is apparent that whatever may be held as to statutory receivers in supplementary proceedings in New Jersey, it is the law of that State that receivers appointed in chancery do not take title to property, but only the right to the possession and disposition of it under the order of the court. One reason for this probably is the power of the court of chancery to compel a conveyance of the property by proceedings *in personam*, which power the common-law courts do not have. Whatever may be the reason, it is apparent that such a receiver is of the same sort as the one described in the cases of *Booth* v. *Clark* (*supra*) and *Union Bank of Chicago* v. *Kansas City Bank* (136 U. S., 223), where it is said:

> A receiver derives his authority from the act of the court appointing him and not from the act of the party at whose suggestion or by

> whose consent he is appointed, and the utmost effect of his appointment is to put the property from that time into his custody as an officer of the court for the benefit of the party ultimately proved to be entitled, but not to change the title or even the right of possession in the property.

The language of this court in *Booth* v. *Clark*, may indicate that the court was moved somewhat by the fact that the New York courts regarded the New York receiver as having no power to act outside of the State of New York. The same consideration applies to this receiver. It seems to be well recognized by the courts of New Jersey that the laws of that State and the decrees of its courts have no effect beyond the limits of that State. In the case of the *State Bank* v. *The Bank of Plainfield* (*supra*), the court said:

> The laws of other governments have no force beyond their territorial limits, and if permitted to operate in other States, it is upon the principle of comity, and only when neither the State nor its citizens would suffer inconvenience from the application of the foreign laws. (2 Kent's Com., 406.)

In the case of *Bullock* v. *Bullock* (51 N. J. Eq., 444), a bill was filed asking that a lien be declared upon property in New Jersey in accordance with a decree of alimony in a divorce suit entered in some other State. Concerning this request the court said:

> So far as I have been able to ascertain from a very thorough examination, the courts have

> taken this view of the case. I have not discovered an instance where the title to property located beyond the jurisdiction of the court in which the judgment or decree was pronounced has been allowed to be affected in any manner by the efforts of the courts pronouncing the judgment or decree, except as they have done so by proceeding against him in person.

The court cites many cases, and among them *Booth* v. *Clark* (*supra*).

It is, therefore, submitted that, like the courts of New York, the courts of New Jersey do not undertake to hold that a receiver appointed in that State acquires title to anything outside of the State.

Furthermore, this receiver is one for the benefit only of the creditors who brought the bill under which the receiver was appointed. Speaking of such a receiver in chancery, in *Whitney* v. *Robbins* (17 N. J. Eq., 360), the New Jersey court said:

> The relief given is for the creditor who pursues the statute; no others, either creditors at large or judgment creditors, are entitled to share with him the benefits of the proceedings until he is satisfied.

See also *Annin* v. *Annin* (9 C. E. Gr., 184).

The fact that the receiver is to take the proceeds from the Treasury of the United States, carry them to New Jersey, and appropriate them to the benefit of one of the creditors of Price to the exclusion of all others, is another circumstance which likens this receiver to the one discussed in *Booth* v. *Clark*.

All these circumstances of this receivership differentiate it from the receivership in the case of *Relfe* v. *Rundle*, and the few cases in the circuit court of appeals that recognize receivers under certain statutes in regard to corporations under the pretended authority of the case of *Relfe* v. *Rundle*.

This New Jersey receiver is exactly the kind of a receiver that this court discussed in *Booth* v. *Clark*, when it said that he had absolutely no power of official action beyond the jurisdiction appointing him, and it is submitted that such is the law of this court.

Fourth. Should the United States extend such comity, it would still be subject to the rights of creditors within the sovereignty of the United States, and a payment to such creditors in the District of Columbia or elsewhere within the United States would be a valid discharge of the debt.

It appears from this record (pp. 6 and 7) that the $7,900 sued for was not paid directly to Price, but was paid by draft made payable to the order of Price, and indorsed in Price's name by John C. Fay. This payment was brought about by the finding of the supreme court of the District of Columbia in a proceeding to which Price and Borcherling, receiver, were parties, to the effect that said Fay and certain other persons were bona fide creditors of Price to the extent of said $7,900, and that the said creditors were residents of the District of Columbia.

In those States in which a voluntary assignment or an assignment by operation of law effected in another State is recognized, such recognition has been made

subject to the rights always of creditors resident in the jurisdiction in which the suit is brought, and sometimes of creditors resident in still another jurisdiction. (*Security Trust Co.* v. *Dodd*, 173 U. S., 624.)

A debt due from the United States has no locality either at the seat of Government or in any of the States. The Government of the United States, which controls the disposition of such a debt, has no locality at any particular place.

> The United States in their sovereign capacity have no particular place of domicile, but possess in contemplation of the law an ubiquity throughout the Union, and the debts due by them are not to be treated like the debts of a private debtor, which constitute legal assets in his own domicile. (*Vaughn* v. *Northrop*, 15 Pet., 1.)

It must follow that Fay and the other creditors resident in the District of Columbia who got this money are as much within the sovereignty of the United States, and as much entitled to the protection of the United States in their rights as creditors of Price, as Mrs. Forrest, administratrix, a resident of New Jersey, can be. If this court thinks that the United States should recognize a receivership instituted under the authority of a sovereignty to which the United States is not subject, following the recent trend of decisions in some of the State courts, such holding should also adopt the limitation indicated. The result of this would be that such a receivership would not be recognized except subject to the rights

of other creditors whenever they may reside within the bounds of the United States, subject to the possible qualification that such creditors must have presented their claims in some legal form and opposed the recognition of such receivership. Here the creditors in the District of Columbia did so. Consequently it must follow that even if Borcherling as receiver had a right to collect this money from the United States as against Price, yet that right is subject to the payment that was made to Fay and the other creditors who asserted their claims in the District of Columbia and to the United States.

No good reason is perceived why the United States should seek to enable a New Jersey receiver to appropriate the funds of Price in its possession to the exclusive use of a New Jersey creditor and to the detriment of other creditors of Price elsewhere, who, it must be found from this record, are equally entitled to consideration. Such a proceeding would certainly not result in that equality of right which should be sought for by a court in administering the assets of an insolvent debtor.

It is respectfully submitted that the judgment of the Court of Claims should be reversed.

WILLIAM H. BUTTON,
Special Attorney.

LOUIS A. PRADT,
Assistant Attorney-General.

O